

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Gary K. Michelson

Serial No.: 08/480,908

Filed: June 7, 1995

For: Threaded Frusto-Conical Interbody
Spinal Fusion Implants



Group Art Unit: 3764

Examiner: M. Brown

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TC 3700 MAIL ROOM

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

DECLARATION OF THOMAS H. MARTIN

Thomas H. Martin declares as follows:

This declaration is made in support of the above-identified patent application. I am the attorney for applicant of the above-identified patent application. The facts set forth in this declaration are based on my own first-hand knowledge.

On March 20, 2000, applicant filed a reply to an Office Action dated October 1, 1999 and a request for withdrawal of the finality of the Office Action. On May 1, 2000, an Advisory Action dated April 24, 2000 was received in our Los Angeles, California offices. After receiving a copy of the Advisory Action in our Chantilly, Virginia office in the normal course of business, I telephoned Examiner Michael A. Brown on May 17, 2000 to discuss the Advisory Action and the request for withdrawal of the finality of the Office Action. During our discussion, the Examiner acknowledged that the Advisory Action was sent in error and that based on the request for withdrawal of finality filed

March 20, 2000 that he would withdraw finality and issue a non-final Office Action on the merits. Examiner Brown advised me that no further action was required by the applicant prior to him mailing the non-final action. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 1 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

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Date



Thomas H. Martin